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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,090	01/19/2007	Tobias Fackler	100728-53-WCG	4311
27386 7590 09/03/2008 NORRIS, MCLAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER NELSON, MICHAEL B	
			ART UNIT 1794	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,090	<b>Applicant(s)</b> FACKLER ET AL.	
	<b>Examiner</b> MICHAEL B. NELSON	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/25/06</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 13-15, and 18, are rejected under 35 U.S.C. 102(b) as being anticipated by Hanada et al. (U.S. 2003/0186039).

Regarding claim 1, Hanada et al. discloses a multilayer film is disclosed with a polyolefin (polypropylene) foamed layer and a polypropylene non-foamed layer ([0026]-[0027]), wherein the foamed layer contains 1 wt. % of nucleating agent ([0120]). Also see Fig. 1d, the second foamed layer acts as a coupling agent layer between the first and second non-foamed layers. The overall thickness of the film is disclosed as 1 mm (Table 1, [0139]-[0140]) and the thickness ratio of the foamed to non-foamed layers is disclosed as being between 100:1 and 100:30 (i.e. 1/100 to about 1/3). These thickness parameters fall within and substantially overlap the instant claimed thickness limitations.)

Regarding claims 2-4, 7, 13-15, and 18, Hanada et al. discloses all of the limitations as set forth above. Additionally the reference discloses that the overall thickness of the film is disclosed is 1 mm (Table 1, [0139]-[0140]) and the thickness ratio of the foamed to non-foamed layers is disclosed as being between 100:1 and 100:30 (i.e. 1/100 to about 1/3). These thickness

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parameters fall within and substantially overlap the claimed thickness limitations of instant claims 2 and 3. See [0026]-[0034], the foamed layer consists of various polypropylene resins and the non-foamed layer also is based on polypropylene. The polymers used include propylene and ethylene block copolymers ([0037]). See [0006], the invention is disclosed as being useful for creating packaging materials for food stuffs, including trays.)

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanada et al. (U.S. 2003/0186039).

Regarding claims 16 and 24, Hanada et al. discloses all of the limitations as set forth above. Hanada et al. does not disclose that the foodstuffs be solid or be meat, sausage or cheese however, given that Hanada et al. discloses containers that could be used to contain solid foodstuffs (i.e. trays [0006]), one of ordinary skill in the art would have used the packaging material to contain all possible solid foodstuffs, including meats, sausages, and cheeses, so as to apply the invention to the greatest possible market.

7. Claims 5, 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanada et al. (U.S. 2003/0186039) as applied to claim 1 above, and further in view of Hatke et al. (U.S. 6,239,187).

Regarding claims 5, 6 and 19 Hanada et al. discloses all of the limitations as set forth above. Hanada et al. does not disclose that layer (A) contains 2.1 to 20 wt.% or that at least one agent from the group talcum, titanium dioxide, silicon oxide, calcium carbonate, magnesium silicate, aluminium silicate, calcium phosphate and montmorillonite is present as the nucleating agent.

Hatke et al. discloses foamed polyolefin resins for use in foodstuff packaging (See Abstract and C13, L5-25). See C10, L1-5, nucleating agents are disclosed as being added at

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between 0.01-20 %, preferably 0.1-10%, which completely overlaps the instant claimed ranges, with the upper preferred endpoint (10%) lying within the claimed range. See C11, L5-10, various nucleating agents are disclosed, inter alia, talc. See C12, L35-45, the foamed polyolefin resin of Hatke et al. exhibits improved heat distortion resistance and excellent mechanical properties.)

The inventions of both Hanada et al. and Hatke et al. are drawn to the field of foamed polyolefin packaging films and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the foamed polyolefin composition of Hanada et al. by using the nucleating agents in the proportion as taught by Hatke et al. for the purposes of imparting improved heat distortion resistance.

8. Claims 8-12, 17, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanada et al. (U.S. 2003/0186039) as applied to claim 1 above, and further in view of Laurent et al. (U.S. 6,132,539)

Regarding claims 8-12, 17, 20-23, Hanada et al. discloses all of the limitations as set forth above. Hanada et al. does not disclose that the multilayer film further comprise the additional sequence of layers of instant claims 8-12 or that the film be used on form-fill-seal machines.

Laurent et al. discloses a multilayer film further comprising the sequence of layers of instant claims 8-12 and to be used on form-fill-seal machines.

(See Fig. 3, C4, L10-35, the multilayer stack, A, is disclosed as lying on top of a foamed polyolefin packaging film, B. The multilayer stack, A, comprises, in order from the surface of

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the foamed polyolefin substrate to the exposed surface: a bonding layer made of polypropylene, 14, a coupling agent layer made of a propylene copolymer, 12, a barrier layer made of ethylene-vinyl-alcohol, 11, a second coupling agent layer made of an ethylene copolymer, 13, and a heat sealable or peelable layer made of low density polyethylene, 15. The bonding layer and the foam layer are both made of the same polyolefin monomer (polypropylene, C3, L40-50). The total thickness of these layers ranges from 31 micrometers (i.e.  $10+3+3+10+5$ ) to 85 micrometers (i.e.  $50+5+5+10+15$ ), with the lower endpoint of the range, 31 micrometers lying within the range. See C1, L1-35, the invention is disclosed as being used with form-fill-seal machines.)

The inventions of both Hanada et al. and Laurent et al. are drawn to the field of foamed polyolefin packaging films and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the multilayer film of Hanada et al. by adding the barrier layer containing stack of Laurent et al. for the purposes of imparting advantageous barrier properties to the packaging film.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MN/

06/02/08

/Carol Chaney/

Supervisory Patent Examiner, Art Unit 1794